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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 1017

CHARLES W. MILLER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 14–18) is reported in 24 F. Supp. 958. The opinion of a majority of the Circuit Court of Appeals and a dissenting opinion (R. 38–41) are reported in 117 F. (2d) 256.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 20, 1940 (R. 42). A petition for rehearing was denied February 3, 1941 (R. 43). The petition for a writ of certiorari was filed May 3, 1941. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Act of July 3, 1930, extending the limitation in Section 19, World War Veterans' Act, upon suits for yearly renewable term insurance provided an extension by implication of the limitation upon suits for "automatic insurance" benefits under Section 401, War Risk Insurance Act, as amended, or removed all limitations on such suits.

STATUTES INVOLVED

The statutes involved are contained in the Appendix, *infra,* pp. 8–10.

STATEMENT

This suit was brought against the United States on November 14, 1932 (R. 1), by the petitioner, to recover "automatic insurance" benefits of $25 per month under Section 401, War Risk Insurance Act, as amended (Appendix, *infra,* p. 8). The declaration (R. 1–3) alleged that the petitioner became totally permanently disabled during the period of his military service from July 10 to December 20, 1917, without having applied for insurance (R. 2).

The Government moved to dismiss the action as barred by limitations (R. 5). The District Court found that the petitioner became totally permanently disabled on December 20, 1917 (R. 19). The

court ruled (R. 19) that the suit was governed by the limitation provision of the Act of May 29, 1928 (Appendix, *infra,* p. 9), but in reliance on the holding of the Circuit Court of Appeals for the Seventh Circuit in *Towery* v. *United States,* 97 F. (2d) 906, subsequently reversed by this Court in *United States* v. *Towery,* 306 U. S. 324, allowed recovery of installments from a date six years prior to the date of the filing of claim in the Veterans' Bureau (R. 17–18, 20–21).

The court held (R. 16) that an extension of the time for filing suits on yearly renewable term insurance claims, provided by the amendment of July 3, 1930, to Section 19 of the World War Veterans' Act (Appendix, *infra,* p. 10), did not apply to automatic insurance, relying on *United States* v. *Preece,* 85 F. (2d) 952 (C. C. A. 10th), certiorari denied, 300 U. S. 660, rehearing denied, 300 U. S. 687; *United States* v. *Pastell,* 91 F. (2d) 575 (C. C. A. 4th); and *United States* v. *Oliver,* 86 F. (2d) 1018 (C. C. A. 6th). The court also held (R. 17) that the limitation provision of the Act of May 29, 1928, remained in effect in its application to automatic insurance.[1]

The Government appealed (R. 25) on the ground that the recovery of any installments was barred by limitations (R. 27–28). The Circuit Court of Appeals, upholding the Government's contention (its

[1] The suit in the instant case would have been in time if the amendment of 1930 were applicable, since the claim was filed on June 11, 1931, and not denied until November 8, 1932 (R. 20). See Appendix, *infra,* p. 10.

judgment in the *Towery* case, *supra,* having meanwhile been reversed by this Court), reversed and remanded with directions to dismiss the action (R. 42), the majority of the court stating in its opinion (R. 38–41) that it adopted an *obiter* in the majority opinion rendered on another appeal in the case. *Miller* v. *United States,* 114 F. (2d) 267, 269–270. The views expressed in the *obiter* were substantially in accord with the holding of the District Court as to the inapplicability of the Act of 1930, and the decisions relied upon were the same as those cited by the District Court.

ARGUMENT

The holding of the Circuit Court of Appeals that the time limitation in Section 19, World War Veterans' Act, 1924, as amended by the Act of May 29, 1928 (Appendix, *infra,* p. 9) was not extended as to suits for automatic insurance benefits by the amendatory Act of July 3, 1930 (which in terms extended the limitation only as to suits for "yearly renewable term insurance" (Appendix, *infra,* p. 10) is supported by the unanimous holdings of three other Circuit Courts of Appeals (*United States* v. *Preece, supra; United States* v. *Pastell, supra; United States* v. *Oliver, supra*), and by the recent decision of the Court of Appeals for the District of Columbia in *Weitlauf* v. *United States,*

118 F. (2d) 394.[2] There is no decision to the contrary.[3] In none of those cases was the suit barred if, as the petitioner contends (Pet. 10), the 1930 Amendment (Appendix, *infra*, p. 10) removed all time limitations upon suits for automatic insurance benefits, or if it extended the limitation upon such suits. In deciding in those cases that the suits were barred, the Courts of Appeals held, in effect, that the applicable limitation was the one provided by the Act of May 29, 1928 (Appendix, *infra*, p. 9) (containing no restriction as to the type of insurance to which it was applicable) or the local statute of limitations applicable to suits on contracts.[4]

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[2] Pending on petition for writ of certiorari, No. 1040, present Term.

[3] Indeed, petitioner himself points out (Br. 9–10) that the intention to exclude automatic insurance from the extension of the limitation by the amendment of 1930 is shown by the language of the Act itself and of prior enactments. (See *United States* v. *Preece*, *supra*, pp. 953, 954; *United States* v. *Pastell*, *supra*, pp. 578–579.) An ample reason for such exclusion, mentioned in the former opinion of the court below (*Miller* v. *United States*, 114 F. (2d) 267, 270), is that the claims for disability under automatic insurance (as distinguished from those under yearly renewable term insurance) were all over ten years old when the 1930 Act was passed.

[4] The contention made by petitioner to the effect that the Act of 1930 removed all limitations upon suits for automatic

Petitioner does not contend that the suit would be timely under Illinois statutes (Cf. Pet. 8).

In support of his contention that there is no time limitation upon a suit for automatic insurance, petitioner argues that the limitation upon such suits in the Act of 1928 was repealed by the Act of 1930, which omitted any reference to automatic insurance. But that argument, as stated in the opinion of the District Court (R. 17), is opposed to the rule that repeals by implication are not favored. *United States* v. *Jackson*, 302 U. S. 628, 631. The decisions relied on by the petitioner in this connection (Pet. 7, 11–12) are not in point. The rule, upon which the petitioner relies, that an amended statute should be read as to all subsequent occurrences as if it had always been in the amended form, was not applied in any of those decisions in support of a holding that there had been a repeal by implication of a statute with respect to matters which, as here, were omitted from the amendatory Act.

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insurance benefits was made in support of the petitions for writs of certiorari in the *Preece* case, *supra* (Br. 11), and in *Morgan* v. *United States*, No. 742, present Term (Br. 3), both of which this Court denied. See the discussion of that contention in the Government's brief in opposition in the *Preece* case (pp. 9–11), to which attention was called in the Government's brief in opposition in the *Morgan* case (Footnote 3, p. 4). And see the opinion of the Court of Appeals for the District of Columbia in the *Weitlauf* case, *supra*, where the contention was expressly rejected.

CONCLUSION

Since the petitioner's contentions involve no conflict of decisions, it is respectfully submitted that the petition should be denied.

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MAY 1941.